

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
SAINNOVAL, :  
:  
Plaintiffs, : 08-CV-04615  
:  
v. : December 3, 2009  
: Central Islip, New York  
CFM ADVISORS, et al., :  
:  
Defendants. :  
:  
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TRANSCRIPT OF CIVIL CAUSE FOR EVIDENTIARY HEARING STIPULATION  
BEFORE THE HONORABLE MICHAEL L. ORENSTEIN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: BRADFORD D. CONOVER, ESQ.  
Conover Law Offices  
75 Rockefeller Plaza  
20th Floor  
New York, NY 10019

For the Defendant: MR. ORTEGA, ESQ.

Court Transcriber: MARY GRECO  
TypeWrite Word Processing Service  
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Proceedings recorded by electronic sound recording,  
transcript produced by transcription service

1           MR. CONOVER: Your Honor, I've had a discussion with  
2 Mr. Ortega and we're prepared to stipulate to place this into  
3 arbitration provided they're prepared to stipulate this is an  
4 employer promulgated plan which under the AAA rules means that  
5 costs are paid by the defendant except for a small cost. That  
6 was one of the issues we were going to address in the  
7 testimony, but if we could stipulate to both those it would  
8 resolve it. It's our perspective, you know, we hadn't seen  
9 these documents before. Our client does not believe she  
10 signed it. It may be a memory problem. We don't know. But  
11 we're prepared not to waste the Court's time exploring that  
12 issue any further.

13           THE COURT: All right. Just so you understand, Mr.  
14 Conover, the basis -- why don't you all be seated. The basis  
15 of my ruling is that under the Federal Rules of Civil  
16 Procedure documents which affect credibility do not need to be  
17 turned over in advance. Matter of fact, if you look at the  
18 forms we have for pretrial orders, you will find them. Matter  
19 of fact, they are not even required in Rule 26(a) initial  
20 disclosure or mandatory disclosure, documents which only  
21 affect credibility.

22           MR. CONOVER: Your Honor, I --

23           THE COURT: Documents such as the offered exhibit is  
24 such a document.

25           MR. CONOVER: I under --

1           THE COURT: All right? Now, without having gone  
2 further, I cannot take a position with you or, you know, with  
3 the plaintiff or the defendant with regard to whether or not  
4 there should be or should not be a stipulation as you've  
5 outlined. I cannot do that. Why? It's very simple. It's as  
6 if I were having a conference on a non-jury trial to try to  
7 settle a case. I can't do that because if I did that it means  
8 that something I may say or do may have an effect on a party's  
9 attitude as to whether I favor one or the other. So I can't  
10 do that. You two will have to either agree or not agree.  
11 Obviously, a stipulation of that nature would resolve the  
12 motion before me.

13           MR. CONOVER: Yes, Your Honor. We're not seeking  
14 your comment. We're just advising the Court we're prepared to  
15 do that.

16           THE COURT: Well, okay. I understand that. Mr.  
17 Ortega?

18           MR. ORTEGA: Yes, Your Honor. I guess for the  
19 purposes of the defendant CFM Advisors and the parties named  
20 herein defendants in which we represent, we'll stipulate that  
21 this is an employer promulgated arbitration procedure. Then I  
22 would ask that the -- I assume you will stipulate that our  
23 motion to compel arbitration be granted.

24           THE COURT: I assume that would be part of a  
25 stipulation --

1 MR. CONOVER: Yes.

2 THE COURT: -- that the parties consent to  
3 arbitration based upon the stipulation tend to go to  
4 arbitration pursuant to the AAA rules and pursuant to the  
5 stipulation which would then conclude the matter before me and  
6 probably Judge Feuerstein.

7 MR. CONOVER: Correct.

8 THE COURT: Ms. Sainnoval, I assume you've had an  
9 opportunity to discuss this resolution or the proposed  
10 resolution of the matter before me with your attorney or with  
11 your attorneys?

12 MS. SAINNOVAL: Yes, sir.

13 THE COURT: And remember you're still under oath  
14 having been sworn in as your witness.

15 MS. SAINNOVAL: Yes.

16 THE COURT: You want to move the microphone over to  
17 Ms. Sainnoval because I need to ask her -- I want to make sure  
18 that she understands that this matter is therefore to the  
19 extent that it is before this Court a motion to stay the  
20 action and to compel arbitration is over. You understand that  
21 if you agree?

22 MS. SAINNOVAL: Yes, sir.

23 THE COURT: Do you understand that you can't come  
24 back to me this afternoon and say Judge, I didn't understand,  
25 I made a mistake?

1 MS. SAINNOVAL: Yes, sir.

2 THE COURT: Have you been satisfied with the legal  
3 services offered to you by your attorneys? I have to tell  
4 you, they've done a very, very fine job, so --

5 MS. SAINNOVAL: Yes, sir.

6 THE COURT: -- I'm hoping you're going to tell me  
7 the same thing.

8 MS. SAINNOVAL: Oh, yes, sir.

9 THE COURT: Anyone force you into agreeing to this  
10 resolution?

11 MS. SAINNOVAL: No, sir.

12 THE COURT: Anyone threaten you?

13 MS. SAINNOVAL: No, sir.

14 THE COURT: Did your counsel threaten you or force  
15 you or coerce you?

16 MS. SAINNOVAL: No, sir.

17 THE COURT: Did anyone on the defense side from CFM  
18 or counsel or anybody from their side threaten or force you or  
19 coerce you?

20 MS. SAINNOVAL: No, sir.

21 THE COURT: Okay. You understand that by going to  
22 arbitration you still get to present what you want to  
23 present --

24 MS. SAINNOVAL: Yes, sir.

25 THE COURT: -- under the rules of arbitration? I'm

1 not familiar with the rules of arbitration but I think there's  
2 a fair opportunity which is for that. Do you understand that?

3 MS. SAINNOVAL: Yes, sir.

4 THE COURT: Do you have any questions you want to  
5 ask me?

6 MS. SAINNOVAL: No, sir.

7 THE COURT: Mr. Ortega, on behalf of the defendants  
8 I assume you are authorized on behalf of the defendants to  
9 agree to the stipulation and the resolution of this particular  
10 matter.

11 MR. ORTEGA: I am, Your Honor. Just one  
12 administrative purposes, Your Honor, for my own administrative  
13 purposes that today present in the courtroom if it was  
14 necessary Ms. Patricia Seagal, our handwriting expert, was  
15 present in Court today.

16 THE COURT: Anything further before me today?

17 MR. CONOVER: No, Your Honor. Thank you.

18 THE COURT: Thank you very, very much.

19 MR. ORTEGA: Thank you, Your Honor.

20 THE COURT: I will inform Judge Feuerstein of the  
21 resolution of this matter and that it is on the record.

22 MR. ORTEGA: Thank you, Your Honor.

23 MS. SAINNOVAL: Thank you.

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1 I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.

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6 Mary Greco

7 Dated: December 8, 2009  
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